IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.4395 OF 2006

In

SUIT NO.3283 OF 2006

Appi Narayan Alke : Plaintiff

V/s.

Shekhar Shetty & Ors. : Defendants

...

Ms Sushma Singh i/b. Mr.Vishal Thadhani for the plaintiff.

Mr.Y.K.Tiwari i/b. K.P.Tiwari & Co., for the defendants.

...

CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 2, 2007.

P.C.

1. This is a suit for a declaration that the defendants have no right, title and interest in the business of M/s.Narayani Sales Corporation, popularly known as "Narayani Wine Shop" since 14.9.2006. The suit is filed by the plaintiff who is the mother of the defendant no.3 Ganesh Narayan Alke. The defendant no.1 Shekhar Shetty is the person in whose favour the plaintiff had admittedly entered into a conducting agreement dated 15.9.2003 which was valid upto 14.9.2006. This agreement was signed by the plaintiff. At this time, there was a power of attorney executed in favour of the defendant no.3. At that time, the third defendant i.e. the son was acting in

pursuance of a power of attorney executed in his favour. This power of attorney is said to have been terminated on 7.12.2006.

2. Apparently, in a suit filed in the City Civil Court, the defendants entered into consent terms on 18.7.2006. Under the consent terms, it appears that the defendant no.1 has been permitted to conduct the business for the period upto 14.9.2001.

3. The learned counsel for the plaintiff submits that thereafter the defendant no.3 has entered into a conducting agreement on 15.9.2006 upto 13.9.2011. According to her, on the basis of this conducting agreement, the plaintiff is entitled to receive the income since she is the owner and she seeks a direction to that effect. The plaintiff is claiming payment under clause 3 of the conducting agreement which is not signed by her and admittedly signed by her son, the defendant no.3, on 14.9.2006. It is difficult to see how the plaintiff can make any claim under the agreement when she disputes the validity of such an agreement. Moreover, it appears that even according to the plaintiff, the period of conducting had been extended from 18.7.2006 upto 13.9.2011 by virtue of the consent terms filed before the City Civil Court in Suit no.3046 of 2006. Thus, it appears that Sekhar is conducting the business even prior to the so-called

conducting agreement dated 15.9.2006 by virtue of the consent terms filed before the City Civil Court. Thus, the order which the plaintiff seeks will have to be in accordance with the consent terms unless the consent terms are set aside. In fact, this Court had observed in the order dated 4.12.2006 that the question whether the defendant no.1 had colluded with the defendant no.3 while obtaining consent terms will have to be considered and that there was no application filed by the plaintiff in the City Civil Court for having the consent decree set aside.

4. It is thus clear that the plaintiff cannot seek payments at this stage under the conducting agreement which she repudiates. Moreover, as observed earlier, even de hors the conducting agreement, it appears that the defendant no.1 is carrying on business under the consent terms filed before the City Civil Court. In the circumstances, it is not possible to grant the relief to the plaintiff in this Notice of Motion by way of appointment under the conducting agreement when it is the plaintiff’s contention that the conducting agreement is not valid. The plaintiff may take recourse to such proceedings as may be advised for the said relief.

5. there is no merit in the Notice of Motion which is hereby dismissed.

S.A. BOBDE, J.